S.B. Civil Misc. Appeal No.1130/2005

M/s. Ambesh Trading Company and another.

vs.

Vikash and others.

Date : 6.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. MS Godara, for the appellants.

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Heard learned counsel for the appellants.

The appellants are aggrieved against the order dated 29.7.2005 by which according to learned counsel for the appellants, the appellants' applications for grant of mandatory and for temporary injunction were dismissed.

According to learned counsel for the appellants, none of the fact of the application for grant of mandaotry injunction was considered by the trial court and the trial court in operative part of the order passed the order of rejection of appellants' application for mandatory injunction. The trial court considered the fact of the case of application for appointment of receiver but the court below did not pass any order for said application. According to learned counsel for the appellants, the appellants were doing the business in the shop in dispute is an admitted fact and they were ousted wrongfully and, therefore, the appellants were entitled for mandatory and prohibitory injunction or in the alternative for

appointment of receiver. For that purpose, they filed three separate applications. According to learned counsel for the appellants, in the facts of the case, the trial court should not have dismissed the applications.

I have considered the submissions of learned counsel for the appellants and perused the facts of the case.

It is clear from the facts of the case that the trial court took note of the fact that the appellants filed the suit after four months of their alleged ouster from the shop and that was accepted on plaintiffs' silent consent (acquisence). In view of the above fact, if the trial court has refused to exercise its discretion for grant of any relief like appointment of receiver or injunction, the trial court has not committed any illegality, particularly when the dispute is in relation to the running of a business and since the respondents were doing business in the shop since last four months prior to filing of the suit, no case is made out for restoring the position ante by mandatory injunction order. In view of the above, even if the trial court has not specifically mentioned some fact from one application or another and has not specifically ordered rejection of application for appointment of receiver, that does not constitute any merit in the case of the appellants. In view of the above, by this order dated 29.7.2005, the appellants all applications have been dismissed is apparently clear from the facts and the reasons given in the impugned order.

I do not find any merit in this appeal and accordingly, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya